



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Diesel Service, Inc.
File: B-229622
Date: March 9, 1988

DIGEST

1. Protest that agency lost and thus failed to consider the firm's quote is denied. It is not permissible to make award to a firm whose quote may have been lost by the government prior to the closing date; to do so would be inconsistent with preserving the integrity of the competitive bidding system.
2. Where contracting agency lost the protester's quote, claim for bid preparation and protest costs is denied since mere negligence or lack of due diligence by the agency, standing alone, does not rise to the level of arbitrary or capricious action which provides a basis for the recovery of bid preparation and protest costs.

DECISION

Interstate Diesel Service, Inc., protests the failure of the Defense Logistics Agency (DLA) to evaluate its quote under request for quotations (RFQ) No. DLA700-87-Q-NG24, issued by the Defense Construction Supply Center (DCSC) for the acquisition of a quantity of fuel injectors. Interstate argues that the failure of the agency to evaluate its quote stems from the fact that the agency lost its quote. Interstate specifically requests that the General Accounting Office grant it its bid preparation costs and its costs associated with filing and pursuing its protest, including attorney's fees, since a contract has already been awarded and fully performed, and, thus, Interstate no longer has an opportunity to compete in the procurement.

We deny the protest and the claim.

The solicitation was issued pursuant to the small purchase procedures outlined in Federal Acquisition Regulation (FAR) part 13, and called for the submission of quotations by August 31, 1987. Interstate, on August 19, sent its quote to DCSC by certified mail, return receipt requested.

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Interstate was provided a receipt for the parcel on August 24 by the Postal Service, showing the signature of a DCSC employee in the "parcel received" block of the certified mail receipt. Interstate therefore presumed that DCSC had received its quote and was in the process of evaluating it.

Subsequently, Interstate became aware of the fact that a contract had been awarded to George Engine Company. Specifically, Interstate was told on November 13 by personnel at George that award had been made to that firm at a price which Interstate alleges was higher than the price offered by Interstate.^{1/} Thereafter, Interstate filed its protest with our Office, alleging that DCSC had failed to properly evaluate its quote. Subsequent to filing its protest, Interstate learned from agency officials that its quote was not in the contract file and that contract performance had been completed. Interstate then amended its protest, alleging that the agency had lost its quote and requesting that we award Interstate its bid preparation costs and its protest costs, its only available remedy.

The agency, while acknowledging that it did in fact lose Interstate's quote, argues that under our decisions Interstate is not entitled to recover its claimed costs. We agree.

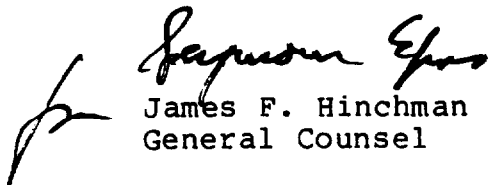
Generally, where an ostensible bidder has complied with all of the requirements of a particular solicitation, but its bid has been lost after being received at the procuring activity prior to bid opening, it is not reasonable or permissible to allow the bidder to resubmit the bid. The award of a contract on the basis of self-serving statements as to the contents of the bid would not be consistent with the maintenance of the competitive bidding system. Antenna Products Corp., B-223154, Aug. 11, 1986, 86-2 CPD ¶ 176. Even if Interstate could prove that the certified mail parcel which it sent to DCSC contained a quote, there is no certainty that a subsequently submitted copy of Interstate's quote would be identical to the quote received and lost before the closing date. Id. Thus, award based upon a copy of the quotation would be inconsistent with preserving the integrity of the competitive bidding system. Id., see also, Prestex, Inc., et al., B-205478 et al., Feb. 17, 1982, 82-1 CPD ¶ 140. Moreover, where, as here, there is no evidence that the loss of a quote had anything to do with a

^{1/} The agency did not send out award notices to unsuccessful offerors since the procurement had been conducted using small purchase procedures and, thus, no notice was required. See FAR § 15.1001(c) (FAC 84-13).

specific intent to exclude a firm from the competition, we will not disturb the procurement. Antenna Products Corp., supra.

Concerning Interstate's claim for bid preparation and protest costs, our Bid Protest Regulations provide for the award of such costs where our Office determines that a solicitation, proposed award, or award "does not comply with statute or regulation." 4 C.F.R. § 21.6(d) (1987). The protester's sole basis for its claim for costs is the fact that its quote was negligently lost by the agency. However, we have specifically held that mere negligence or lack of due diligence on the part of an agency, standing alone, does not rise to the level of arbitrary or capricious action which provides a basis for the recovery of bid preparation and protest costs. Computer Resource Technology Corp., B-218292.2, July 2, 1985, 85-2 CPD ¶ 14; Restoration Unlimited, Inc., et al., B-221862, May 28, 1986, 86-1 CPD ¶ 493.

Accordingly, we deny the protest and claim.


James F. Hinchman
General Counsel